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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/770,272

02/03/2004

Scott Alberts

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47360 7590 06/18/2007
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EXAMINER

MUSSELMAN, TIMOTHY A

ART UNIT

PAPER NUMBER

3714

MAIL DATE

DELIVERY MODE

06/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/770,272	Applicant(s) ALBERTS ET AL.	
	Examiner Timothy Musselman	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f):
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Objections

Claim 4 is objected to by the examiner because it claims visual displays in the form of a compact disc. While examiner understands what applicant is intending to claim, the language is not explicitly clear regarding whether applicant is claiming visual data *encoded* on a compact disc, or whether the compact disc *itself* is the visual data. The claim should be amended to clearly claim the visual data as encoded on the CD to remove this ambiguity.

Claims 1, 10, and 16 are objected to by the examiner because the claims do not contain a preamble providing a general description of the purpose of the method. Examiner recommends rewording the claim introductions to read "a teaching method for teaching an individual to speak correctly *comprising the steps of...*". The use of the transitional phrase "comprising the steps of" clearly defines where the preamble ends and the claim limitations begin. For guidance on claim formation see 37 CFR 1.75 and MPEP 608.01(m).

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding claims 1, 10, and 16, the single step claims (i.e. providing the individual with displays...), where a step recitation does not appear in combination with another recited element of steps, is subject to undue breadth rejection. In re Hyatt, 708 F.2d 712 714-715, 218 USPQ 195, 197 (Fed. Cir. 1983). The only step in the claims covers every conceivable structure for achieving the stated property (providing the individual with displays...), and is held non-enabling for the specification discloses at most only those structures known to the inventor. Claims 2-9, 11-15, and 17-20 are rejected because of their incorporation of the above through their dependencies.

Claim Rejections - 35 USC § 102

Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kirksey et al. (US 6,273,726).

The following is a quotation of the relevant portion of 35 U.S.C. 102 that forms the basis for the rejections made in this section of the office action;

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States.

Regarding claims 1-20, Kirksey discloses an audio visual language teaching method for teaching an individual to speak correctly and effectively. See col. 2: 5-19.

The method comprises providing to the individual visual displays comprising a plurality of graphical representations for guiding the individual in creating specific sounds and speech patterns [claims 1, 10, and 16]. See col. 8: 20-30.

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Kirksey further discloses wherein the visual displays are provided in written and video (e.g. electronic) form [claims 2-3, 11-12, and 17-18]. See col. 7: 8-11.

Kirksey further discloses wherein the data for the visual displays is provided on a compact disc [claim 4]. See col. 10: 30-34.

Kirksey further discloses wherein the visual display includes graphical representations of the volume, pitch, and tone that the user should use when enunciating the words [claims 5, 7, 9-10, 13, 15, 16, and 20]. See col. 8: 20-30.

Kirksey further discloses wherein the visual displays provided to the user include a graphical representation of pace [claims 6, 10, and 16]. See col. 5: 34-61.

Kirksey further discloses wherein the graphical display comprises indicating to individual when words are to be spoken with more or less melody [claims 8, 10, 14, and 19]. See col. 8: 20-30, and note that melody is merely a combination of pace, pitch, tone, and volume.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy Musselman whose telephone number is (571)272-1814. The examiner can normally be reached on Mon-Thu 6:00AM - 4:30PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto, can be reached on (571)272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Kathleen Mosser
Primary Examiner
Art Unit #3714